

Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, New York 10022

troutman.com



Stephen G. Rinehart
stephen.rinehart@troutman.com

So ordered
1/3/23
Alvin K. Hellerstein

December 30, 2022

VIA ECF

Hon. Alvin K. Hellerstein
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: The Avon Company f/k/a New Avon LLC et al. ("Avon") v. Fareva Morton Grove, Inc., et al. ("Fareva"), Case No. 22-cv-4724

Dear Judge Hellerstein:

We represent Defendants Fareva Morton Grove, Inc. and Fareva S.A. (together, "Fareva") in the above-referenced matter and write on behalf of Fareva to respectfully request that this Court enter an Order to file under seal the transcript of the deposition of Philip McCarney, dated December 13, 2022, as cited by both parties in their Joint Letter dated December 30, 2022. The parties have conferred, and Avon has no objections to filing the transcript under seal. A copy of the transcript is being contemporaneously filed under seal, pursuant to the Court's standing order, 19-mc-00583 and this Court's Individual Rule 4(B)(ii). In support of this Letter Motion, Fareva states as follows:

On October 7, 2022, this Court entered the Stipulated Confidentiality Agreement and Protective Order (the "Protective Order"). ECF No. 65. This Order provides that certain information may be designated as Confidential if it includes certain categories of information such as "previously non-disclosed financial information" or "previously non-disclosed business plans, product development information, marketing plans, or other competitively sensitive information," and so forth. *Id.* ¶ 2.

Additionally, the Protective Order provides that "[a] Party may designate Confidential Discovery Material as "Attorneys' Eyes Only" if that Party believes in good faith that the disclosure to any other Party would have a significant adverse impact on the designating Party's business, financial condition, or ability to compete, or otherwise would create a substantial risk of serious harm that could not be avoided by less restrictive means. Such information includes, without limitation, research and development data, financial projections, financial information

Hon. Alvin K. Hellerstein
December 30, 2022
Page 2



concerning the costs and pricing of goods, sales and profits, marketing research and strategy, and identities and lists of customers.” *Id.* ¶ 12. Material designated “Attorneys’ Eyes Only” may be shown only to counsel and their legal assistants, outside vendors (such as copy-service providers), mediators and arbitrators, and this Court, including its support personnel and court reporters. *Id.* ¶¶ 7(b), (c), (d), and (i), 13.

Mr. McCarney’s deposition transcript contains information that if disclosed “would have a significant adverse impact on the designating Party’s business, financial condition, or ability to compete, or otherwise would create a substantial risk of serious harm.” Specifically, the transcript contains information about the identities of customers other than Avon and which are competitors of Avon, customer products, and materials necessary for the development of those products, among other things. This information, if publicly disclosed, would have a significant adverse impact on Fareva’s business and relationship with its clients (including contractual confidentiality commitments to them). As such, Fareva has designated the transcript as Highly Confidential.

Given the proximity of the parties’ joint filing to the parties’ receipt of the transcript (which is still in the process of being reviewed by the deponent), there is no less restrictive alternative to filing the deposition transcript under seal. Thus, the information at issue satisfies the standard for confidentiality and sealing set forth in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006).

Therefore, Fareva respectfully requests that this Court maintain the deposition transcript of Philip McCarney, dated December 13, 2022, under seal.

Respectfully submitted,

**TROUTMAN PEPPER HAMILTON
SANDERS LLP**

By: /s/ Stephen G. Rinehart
Stephen G. Rinehart
Amanda Lyn Genovese
875 Third Avenue
New York, NY 10022
Phone: (212) 704-6000
Fax: (212) 704-6288
stephen.rinehart.com
amanda.genovese@troutman.com

Michael Lacy (*pro hac vice*)

Hon. Alvin K. Hellerstein
December 30, 2022
Page 3



Sarah E. Siu (*pro hac vice*)
1001 Haxall Point, 15th Floor
Richmond, VA 23219
Phone: (804) 697-1200
Fax: (804) 697-1339
michael.lacy@troutman.com
sarah.siu@troutman.com

Attorneys for Defendants

cc: All Counsel of Record (via ECF)